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Attorneys for JOHN ELMBURG, ROBERT  
ELMBURG, ERIC ELMBURG, ROCKY  
FLICK, CRESTWOOD HOLDINGS, INC. and  
BERGAN, LLC

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL MONTGOMERY,  
Plaintiff,

v.

WAL-MART STORES, INC.;  
KINDERHOOK INDUSTRIES II, L.P.;  
KINDERHOOK INDUSTRIES, L.L.C.;  
KINDERHOOK CAPITAL FUND II, L.P.;  
CRESTWOOD HOLDINGS, INC.;  
BERGAN, L.L.C.; JOHN ELMBURG;  
ROBERT ELMBURG; ERIC ELMBURG;  
ROCKY FLICK; HOME DEPOT U.S.A.,  
INC.; DOES 1 through 20 inclusive,  
Defendants.

Case No.: 12CV3057 JLS (DHB)

**DEFENDANTS JOHN  
ELMBURG AND ERIC  
ELMBURG'S NOTICE OF  
MOTION AND MOTION TO  
DISMISS FOR LACK OF  
PERSONAL JURISDICTION  
(12(B)(2)), LACK OF STANDING  
(12(B)(1)), FAILURE TO STATE  
A CLAIM (12(B)(6)) AND  
MOTION TO STRIKE (12(F))**

Date: April 11, 2013  
Time: 1:30 p.m.  
Ctvm: 3B  
Judge: Hon. Janis L. Sammartino

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on April 11, 2013, at 1:30 p.m., or as soon  
3 thereafter as this matter may be heard, in Courtroom 3B of the above Court,  
4 Defendants JOHN ELMBURG and ERIC ELMBURG (collectively, "Elmburgs") will  
5 and hereby does move the Court for an order dismissing the claims against him in the  
6 above styled action pursuant to pursuant to Fed. R. Civ. P. 12(b)(2) for lack of  
7 personal jurisdiction, Fed. R. Civ. P. 12(b)(1) for lack of standing, pursuant to  
8 12(b)(6) for failure to state a claim, and for an order striking Plaintiff's claim for  
9 punitive damages and for attorneys' fees and costs pursuant to Fed. R. Civ. P. 12(f).

10 Elmburgs' motion is based upon this Notice and Motion and the accompanying  
11 Memorandum of Points and Authorities, the Declaration of John Elmburg, the  
12 Declaration of Eric Elmburg, and the pleadings and other papers on file with the  
13 Court.

14  
15 Dated: March 6, 2013

**DUANE MORRIS LLP**

16  
17 By: /s/ Patricia Hollenbeck  
18 Patricia P. Hollenbeck  
19 Rebecca G. Church  
20 David E. Jones  
21 Attorneys for JOHN ELMBURG, ROBERT  
22 ELMBURG, ERIC ELMBURG, and  
23 ROCKY FLICK  
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